SUPREME COURT, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

Nos. 74-1589 and 1590

GENERAL ELECTRIC COMPANY, *Petitioner*

v.

MARTHA V. GILBERT, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO-CLC, *et al.*, *Respondents*

MARTHA V. GILBERT, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO-CLC, *et al.*, *Petitioners*

v.

GENERAL ELECTRIC COMPANY, *Respondent*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF THE AMERICAN TELEPHONE AND TELEGRAPH COMPANY AS AMICUS CURIAE

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BRIEF OF THE AMERICAN TELEPHONE AND TELEGRAPH COMPANY AS AMICUS CURIAE

INTEREST OF THE AMICUS CURIAE[1]

The American Telephone and Telegraph Company, together with the Associated Bell Companies (herein-

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[1] This brief is filed pursuant to Supreme Court Rule 42(2). Written consent of Petitioner and Respondents has been obtained and filed with the Clerk of the Court.

after, Bell System Companies), is the largest private employer in the nation, and almost 50 percent of its employees are women. In connection with employment, Bell System Companies maintain disability programs which provide wage continuation benefits for employees disabled to work because of sickness or accident. All these plans, unlike the General Electric Company's plan, provide benefits for disability absences resulting from pregnancy complications and abnormal pregnancies, but, like the General Electric Company's plan, none provides wage continuation benefits for absences attributable to normal pregnancy and childbirth.[2]

Suits have been brought against six Bell System Companies,[3] alleging that the failure to provide sickness and accident benefits for normal pregnancy violates Title VII. In one of these cases, the Company has a petition for *certiorari* pending before the Court.[4] The resolution of the present case will have a substantial, and quite possibly a dispositive, effect on the cases pending against the Bell System Companies.

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[2] Each Bell System Company provides periods of uncompensated leave for pregnancy and childbearing whose length is determined on a case-by-case basis. The time of beginning and ending maternity leave is basically determined by the individual employee on the advice of her doctor.

[3] *CWA* v. *AT&T, Long Lines Department, petition for cert.* filed, 43 U.S.L.W. 3684 (U.S. June 24, 1975) (No. 1601); *CWA* v. *Illinois Bell Tel. Co.*, No. 73-C-959 (N.D. Ill., filed April 13, 1973); *CWA* v. *Southern Bell Tel. & Tel.*, No. 18328 (N.D. Ga., filed May 17, 1973); *CWA* v. *New York Tel. Co.*, C.A. No. 73-3352 (S.D.N.Y., filed July 31, 1973); *CWA* v. *The Pacific Tel. & Tel. Co.*, C.A. No. C-73-1739 RFP (N.D. Cal., filed Sept. 28, 1973); and *CWA* v. *South Central Bell Tel. Co.*, C.A. No. 73-1771 Section A (E.D. La., filed July 5, 1973).

[4] *CWA* v. *AT&T, Long Lines Dept., supra*, n. 3.

SUMMARY OF ARGUMENT

1. The statistics submitted based on the operation of the Bell System Companies' sickness and accident benefit programs demonstrate that the provision of benefits for normal pregnancy would increase cost dramatically and would augment the disproportionate advantage women presently enjoy in disability plan benefits. Further, the data regarding the rate of return of employees following maternity leave and following disability absence, show that the two conditions are significantly different for employment-related purposes. By covering the same disabilities on the same terms and conditions for all employees, regardless of sex, an employer affords equal risk protection from its disability benefits plan to males and females alike. Title VII should not be construed to require more.

2. The decision below conflicts in principle with this Court's decision in *Geduldig* v. *Aiello*.[5] The Court there held that the Equal Protection Clause of the Fourteenth Amendment did not require California to cover absences due to normal pregnancy under a state-administered disability benefits plan. In reaching this conclusion, the Court explicitly stated that the exclusion of pregnancy did not constitute discrimination on the basis of sex, observing that "[t]here is no risk from which men are protected and women are not."[6] The decision in *Aiello* cannot be dismissed—as the court below would dismiss it—as simply one in which this Court found discrimination based on sex, but held that the discrimination passed constitutional

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[5] 417 U.S. 484 (1974).

[6] 417 U.S. 484 at 496-497 (1974).

muster because it was justifiable under traditional Fourteenth Amendment standards. The Court went further than that in *Aiello*. It concluded in unmistakable terms that the exclusion of normal pregnancy from a disability benefits plan does not constitute sex-based discrimination—a conclusion which is as valid under Title VII as under the Fourteenth Amendment.

ARGUMENT

I. STATISTICS DEMONSTRATE THAT THE OPERATION OF A DISABILITY BENEFITS PLAN WHICH EXCLUDES NORMAL PREGNANCY DOES NOT DISCRIMINATE AGAINST WOMEN

The Bell System Companies have been concerned with the question before the Court since the promulgation of the revised EEOC Guidelines on Sex Discrimination in 1972.[7] Their concern was sharpened by the filing of the six lawsuits challenging their sickness and accident disability programs, and by the December, 1973 proposal by the Office of Federal Contract Compliance to revise its Sex Discrimination Guidelines.[8] As a result of these developments, the Bell System Companies undertook to review the operation of these programs and to collect and collate extensive data regarding the present treatment of men and women under such programs; the cost and benefit impact of adding coverage of normal pregnancy; and

[7] 29 C.F.R. § 1604.10(b).

[8] 38 Fed. Reg. 35336-35338. Among the changes under consideration is a provision which would require federal contractors to provide sickness and accident disability benefits for absences from work due to normal pregnancy. This would constitute a reversal of OFCC's present position that, "There is no requirement that an employee be paid during absence [for maternity leave]." Memorandum of John L. Wilks, Director, OFCC, to Agency Heads (Nov. 12, 1970) at 5.

the comparative, employment-related characteristics of maternity leaves and disability absences. The Bell System Companies responded to OFCC's request for public comments on the proposed revisions to its Sex Discrimination Guidelines by submitting a summary of pertinent data regarding the operation of their sickness and accident disability programs. These public comments, which form the basis of the following discussion, are attached as an appendix to this brief.

A. Women Receive a Disproportionate Advantage under Existing Disability Plans Even Where Benefits for Normal Pregnancy Are Not Provided

The distribution of benefits between men and women under the sickness and accident disability plans of the Bell System Companies confirms that, even without considering absences relating to normal pregnancy, women have a greater frequency rate (number of disabilities), and severity rate (duration of disabilities) than men. In fiscal years 1970-1971 and 1971-1972, women had a higher frequency of disabilities and lost more total days from work in sixteen of the seventeen disability group classifications.[9] In 1970-1971, women accounted for 64.65 percent of the total days for which benefits were paid, even though they were only 48.57 percent of the total work force eligible for benefits. Similarly, in 1971-1972, women received compensation for 63.45 percent of the total benefit days though representing only 48.29 percent of employees eligible for benefits.

[9] The one exception in both years is "Diseases of circulatory system" (Group 7), which includes heart attacks and other cardiac problems.

The seventeen disability group classifications, with the exceptions of "Complications of pregnancy, childbirth and puerperium" (Group 11), and "Perinatal morbidity and mortality" (Group 15), contain comparable conditions, including some conditions which are unique to one sex. Thus, while prostate trouble may be unique to males, when considered with other "Diseases of the genitourinary system" (Group 10), women have a considerably higher frequency rate and a dramatically greater number of total days lost.[10]

B. Pregnancy Is Unique in Its Cost Impact upon Benefits Programs

Calculations based on data collected by the Bell System Companies also confirm that coverage of normal pregnancy would generate a significantly greater number of total disability days than any other category of sickness or injury for men and women combined.

Based on a substantial survey, it was determined that female Bell System employees experienced approximately 21,700 pregnancies in fiscal year 1970-1971, and approximately 23,000 pregnancies in fiscal year 1971-1972. It is impossible to fix precisely the average term for which benefits would have been provided if normal pregnancy had been covered, since estimates of the period of actual disability connected with normal pregnancy range from less than six weeks to six months.[11] However, assuming an average duration of eight weeks, normal pregnancy would have accounted for 1,215,200 disability days in 1970-1971 and 1,288,000 disability days in 1971-1972. Had normal pregnancy been compensated, women, who represented 49 percent of the System's work force in 1970-1971, would have received benefits for 72 percent of the total disability days. In 1971-1972 women would have accounted for 71 percent of all benefit days though constituting only 48 percent of total employees eligible for benefits.

[10] In both 1970-71 and 1971-72, women accounted for almost six times as many lost days as men in this classification:

	Women	Men
1970-71	374,707	66,982
1971-72	391,224	71,290

[11] *See* Appendix at 6a-7a. The Court has recognized the "plethora of conflicting medical testimony," on the duration of any inability to work connected with pregnancy. *Cleveland Bd. of Educ.* v. *La Fleur*, 414 U.S. 632 (1974).

Based on these calculations, together with the average salary and seniority of eligible women, system-wide costs for disability benefits would have been increased by $15,762,663 in 1970-1971 and $19,037,330 in 1971-1972.[12] However, the impact on the present distribution of sickness and accident disability benefits would be even more dramatic. If pregnancy had been covered in both of the survey years, 5 percent of eligible women, or approximately 2.5 percent of the Companies' work force, would have accounted for approximately 21 percent of the total days for which disability benefit payments were made. No other single disability group—even including both sexes—could generate so large a number of disability days for which benefits would be paid.

[12] Pregnancy alone would have accounted for 14.47% and 13.90% of all benefits paid in the respective survey years. These estimates reflect only basic disability costs, and do not include wage-related costs such as Social Security, pensions, health insurance, etc. Moreover, the estimate is based on the assumption of an average disability period of eight weeks. Payment for the full average maternity leave period of 5½ months would have increased these costs to $32,739,007 and $39,539,070 respectively.

C. The Low Return Rate Makes Maternity Leaves Unlike Sickness and Accident Disabilities for Job-Related Purposes

Title VII does not require private employers to provide any sick leave or disability benefits, and the Bell System Companies submit that the decision to provide some form of protection against illness and injury should not obligate an employer to provide benefits for another condition which cannot properly be classified as either an illness or an injury. The Bell System Companies also submit that absences from work for pregnancy and childbirth are substantially different from absences caused by sickness or accident disabilities. Perhaps the most significant distinction for private employers, who consider disability benefits as part of an overall compensation package, is the difference in return rates for the workers in each category.

A survey of maternity leaves and absences caused by sickness and accident disabilities conducted by Illinois Bell in 1972 showed that only about 3%[13] of those who had been disabled failed to return to work while over 48 percent of employees who took maternity leave did not return following their leave. Using these figures to project costs to the System as a whole, 6.6 and 9.1 million dollars of the estimated costs of providing maternity benefits in the respective survey years, would have been paid to claimants who never returned to work. These payments would have been inconsistent with the disability programs' basic purpose of providing a bridge between periods of employment and would have constituted a unique form of severance pay.

[13] The vast majority (almost 90%) of those who did not return to work following a covered disability had either died or become eligible for a company pension.

II. THIS COURT HAS DECIDED THAT THE EXCLUSION OF NORMAL PREGNANCY FROM COVERAGE UNDER A DISABILITY BENEFITS PLAN DOES NOT CONSTITUTE DISCRIMINATION ON THE BASIS OF SEX

In *Aiello,* the Court held that the Equal Protection Clause of the Fourteenth Amendment does not require California to cover absences due to normal pregnancy under a state-administered disability benefits plan. In the course of determining that the California program did not discriminate against *any* definable group or class, the Court explicitly held that the exclusion of pregnancy does not constitute discrimination on the basis of sex, noting that "[t]here is no risk from which men are protected and women are not."[14] As the Court further stated:

> The dissenting opinion to the contrary, this case is thus a far cry from cases like *Reed* v. *Reed,* 404 U.S. 71, and *Frontiero* v. *Richardson,* 411 U.S. 677, involving discrimination based upon gender as such. The California insurance program does not exclude anyone from benefit eligibility because of gender but merely removes *one physical condition*—pregnancy—from the list of compensable disabilities. While it is true that only women can become pregnant, *it does not follow that every legislative classification concerning pregnancy is a sex-based classification* like those considered in *Reed, supra,* and *Frontiero, supra. Normal pregnancy is an objectively identifiable physical condition with unique characteristics.*
>
> * * * *
>
> The lack of identity between the excluded disability and gender as such under this insurance pro-

[14] 417 U.S. at 496-497. This holding follows the Court's previous approach that there can be no denial of equal protection unless a state has acted differently with respect to individuals or groups "similarly circumstanced." *Reed* v. *Reed,* 404 U.S. 71, 75-76 (1971).

gram becomes clear upon the most cursory analysis. *The program divides potential recipients into two groups—pregnant women and non-pregnant persons. While the first group is exclusively female, the second includes members of both sexes.*[15]

The Court in footnote 20 thus expressly held that the exclusion of pregnancy from coverage under a disability program does not constitute sex discrimination.

A. The Court's Decision in Aiello Is Fully Applicable to Employer Disability Benefits Plans under Title VII

The logic of the Court's decision in *Aiello* is fully applicable to cases involving employer disability benefits plans under Title VII. The threshold question in evaluating the exclusion of normal pregnancy from such a plan under Title VII is the same as that presented under the Equal Protection Clause in *Aiello*; does this exclusion constitute sex discrimination? Indeed, the EEOC, AT&T and other parties concerned about the application of Title VII to employer benefit plans recognized that the Court's decision in *Aiello* would have a substantial, if not controlling, effect on interpretations under Title VII involving the differing treatment of pregnancy and sickness. For this reason, many of them filed *amicus curiae* briefs in that case on the issue of whether the exclusion of absences due to normal pregnancy from a disability benefits plan constitutes sex discrimination. As the EEOC stated in its *amicus* brief to the three-judge court in *Aiello*:

> The United States Equal Employment Opportunity Commission files this brief because it believes the standards the Court should apply in

[15] 417 U.S. at 496-497 n. 20 (emphasis added).

> determining the constitutionality of § 2626 of the California Unemployment Insurance Code are similar to the standards which would be applied to the same policy if it were challenged under Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e-*et seq.*, as amended by the Equal Employment Opportunity Act of 1972, P.L. 92-261, 86 Stat. 103 (March 24, 1972).[16]

Moreover, the dissent in *Aiello* (quoting at length from the EEOC's brief setting forth its interpretation of Title VII) asserted that the exclusion of normal pregnancy from a disability benefits plan constitutes sex discrimination, at least if a comparable and exclusively male condition is not also excluded. The majority emphatically rejected that analysis, stating that such an exclusion is not sex discrimination—

> [a]bsent a showing that distinctions involving pregnancy are mere pretexts designed to effect an invidious discrimination against the members of one sex or the other. . . .[17]

Finding no evidence that the selection of risks covered discriminated against women in terms of their "aggregate risk protection" the majority decided that the exclusion was neither directly nor by pretext sex discrimination.

The same considerations apply in determining whether an employer discriminates on the basis of sex within the meaning of Title VII by not offering the same benefits for normal pregnancy as for accidents

[16] Brief for the EEOC as *Amicus Curiae* in *Aiello* v. *Hansen*, 359 F. Supp. 792 (N.D. Cal. 1973), *reversed sub nom. Geduldig* v. *Aiello*, 417 U.S. 484 (1974), at 1.

[17] 417 U.S. at 496-497 n.20.

and sickness and other temporary disabilities.[18] The court below, on the other hand, sought to differentiate *Aiello* on the basis that "our case is one of statutory interpretation rather than one of constitutional analysis."[19] As Judge Widener noted in his dissent in the court below,[20] this distinction misses the definitional point of *Aiello*. Furthermore, it is contrary to persuasive authority holding that the standards under Title VII and the Fourteenth Amendment should be the same.[21] As stated in *Chance* v. *Board of Examin-*

[18] The Bell System Companies recognize that the plan at issue here differs from that at issue in *Aiello* in one respect, *i.e.*, the General Electric Company's plan excludes from coverage complications of pregnancy. The court below, however, invalidated the General Electric Company's plan as a whole. The Bell System Companies submit that such a result clearly is not warranted by this one factual difference. The proper approach, rather, is to recognize that insofar as the General Electric Company's plan parallels that at issue in *Aiello, i.e.*, its exclusion from coverage of normal pregnancy, it is permissible under Title VII. It is only the exclusion of complications of pregnancy, which was not at issue in *Aiello*, as to which, conceivably, a different conclusion could be reached. If this aspect of the plan were found unacceptable, the appropriate remedy is to enjoin only the offending portion of the practices at issue and not the plan as a whole. *See Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163, 179 (1972); *Milliken* v. *Bradley*, 418 U.S. 717, 757 (1974) (Stewart, J. concurring).

[19] *Gilbert* v. *General Electric Company*, 519 F.2d 661, 667 (4th Cir. 1975) quoting from *Wetzel* v. *Liberty Mutual Ins. Co.*, 511 F.2d 199, 203 (3d Cir. 1975).

[20] 519 F.2d at 668-669.

[21] There can be no doubt that the development of equal employment opportunity law under Title VII has been significantly affected by concepts first enunciated in equal protection cases. *See e.g., Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), *citing Gaston County* v. *United States*, 395 U.S. 285 (1969) (re educational disadvantage and voting standards); *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792 (1973), *citing Chance* v. *Board of Examiners*, 458 F.2d 1167 (2d Cir. 1972); and *Castro* v. *Beecher*, 459 F.2d 725 (1st Cir. 1972) (both equal protection cases). *See also, Papermakers Local 189* v. *United States*, 416 F.2d 980 (5th Cir. 1969), *cert. denied*, 397 U.S. 919 (1970), *citing, e.g., Louisiana* v. *United States*, 380 U.S. 145 (1965) (re facially neutral standards in voting registration as perpetuating past discrimination).

ers,[22] it would be "anomalous at best" if public and private employers were held to different standards under Title VII and the Fourteenth Amendment in cases challenging allegedly discriminatory employment practices.[23] Indeed, as Judge Widener also noted, in the present context "illogical results [are] bound to follow" if this Court's reasoning in *Aiello* is held not applicable to cases arising under Title VII:

> A state's disability benefit plan for its own employees covered by Title VII . . . would . . . not be allowed to exclude pregnancy from its coverage. However, such an exclusion could be made freely in a state plan for employees of private employers . . . .[24]

Certainly, the argument that because only women become pregnant, a sickness plan which excludes normal pregnancy, has a "disparate effect" upon women which constitutes a *prima facie* case of sex discrimination ignores the holding of *Aiello* on this precise point. In answer to the same contention, the Court held that

[22] 458 F.2d 1167, 1176 (2d Cir. 1972).

[23] *Accord, U.S.* v. *Chesterfield County School District*, 484 F.2d 70, 73 (4th Cir. 1973) (". . . the test of validity under Title VII is not different from the test of validity under the Fourteenth Amendment.").

[24] 519 F.2d 661, 669 (4th Cir. 1975) (Widener, J. dissenting). *See* Larson, *Sex Discrimination as to Maternity Benefits*, 1975 DUKE L. J. 801, 805 and 825 (1975).

the dispositive factor is not whether an isolated condition is covered or not, but whether there is any condition which is covered for one class but not for another, *i.e.,* whether the "aggregate risk protection" derived from the plan discriminates against the complaining class.[25]

Thus, absent a showing of pretext, a case of sex discrimination is not established by proof that a benefits plan treats normal pregnancy differently from disabilities due to other causes. In this regard, the Bell System Companies note that the Court's recognition of the uniqueness of pregnancy made express in *Aiello* what was implicit in its earlier decision in *Cleveland Board of Education* v. *La Fleur.*[26] In *La Fleur,* both the maternity policies approved and those disapproved by the Court were applied by the Board to pregnant women but not to persons otherwise disabled. The Court, however, recognized the unique nature of pregnancy by resolving the Fourteenth Amendment challenge on due process grounds even though the parties and the courts below had framed the issue in terms of whether a sex-based equal protection claim had been stated.

The appropriateness of applying *Aiello* to Title VII cases is further illustrated by this Court's decisions which hold that a Title VII violation does not exist

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[25] 417 U.S. at 496-497:

> There is no evidence in the record that the selection of risks insured by the program worked to discriminate against any definable group or class in terms of the aggregate risk protection derived by that group or class from the program. There is no risk from which men are protected and women are not. Likewise, there is no risk from which women are protected and men are not. [Footnotes omitted.]

[26] 414 U.S. 632 (1974).

simply because one aspect of an employer policy can be identified which affects employees of one sex, race or ethnic group differently from another. In *McDonnell Douglas Corp.* v. *Green*[27] and *Espinoza* v. *Farah Manufacturing Co.,*[28] the Court used an *Aiello*-like analysis to determine whether the practice violated Title VII. In *Espinoza,* the Court affirmed the decision of the Fifth Circuit that an employer did not discriminate on the basis of national origin simply because it refused to employ aliens. The Court acknowledged that "there may be many situations where discrimination on the basis of citizenship would have the effect of discriminating on the basis of national origin" as where citizenship is used as a pretext to disguise ethnic discrimination.[29] However, the Court found that the company's employment of persons having the same national ancestry as the plaintiff was disproportionately high in the job for which the plaintiff applied, and therefore concluded that the refusal to employ aliens was not a pretext for discrimination.[30]

A similar analysis was followed in *McDonnell Douglas.* There, the Court reversed and remanded a lower

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[27] 411 U.S. 792 (1973).

[28] 414 U.S. 86 (1973).

[29] 414 U.S. at 92.

[30] *Id.* at 93. As a result of its finding, the Court declined to give significance to an EEOC Guideline declaring refusal to hire aliens to be a violation of Title VII since the Guideline's premise ". . . that discrimination on the basis of citizenship has the effect of discrimination on the basis of national origin—is not borne out." 414 U.S. at 93. For a fuller discussion of the appropriate treatment of EEOC Guidelines in such cases, *see* discussion at pp. 18-20, *infra.*

court decision which had held that an employer discriminated against a black employee by refusing to rehire him because of his involvement in a civil rights demonstration which unlawfully obstructed access to the employer's work place. While stressing that Title VII does not permit an individual's prior unlawful conduct to be used as a pretext for racial discrimination, the Court concluded that

> . . . in the absence of proof of pretextual or discriminatory application of such a reason, this cannot be thought the kind of "artificial, arbitrary, and unnecessary barriers to employment" which the Court found to be the intention of Congress to remove. [citation omitted].[31]

In these cases, the Court has called for review under Title VII of whether challenged employment practices (which are not arbitrary barriers to employment—such as non-job-related tests) are pretexts for discrimination.

A comparison of the distinction challenged in *Phillips* v. *Martin Marietta Corp.*[32] with that involved here and in *Aiello* reveals the logic of the different analytical approaches taken by the Court in applying Title VII. In *Phillips,* the employer had different hiring policies for males and females having pre-school children. Such discrimination on the basis of sex is unlawful, the Court held, at least without a showing that it was based upon factors "relevant to job performance."[33] In contrast, the disability benefits policies at

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[31] 411 U.S. at 806. *Compare Griggs* v. *Duke Power Co., supra. See also Albemarle Paper Co.* v. *Moody,* 43 U.S.L.W. 4880 (U.S., June 25, 1975).

[32] 400 U.S. 542 (1971).

[33] *Id.* at 544.

issue here and in *Aiello* do not differentiate between males and females with identical conditions; it is pregnancy, not parenthood, which is unique. As the Court expressly stated in answer to the same contention in *Aiello*:

> Normal pregnancy is an objectively identifiable physical condition with unique characteristics.[34]

Furthermore, the thrust of the "disparate effect" argument is not limited to sick leave plans which exclude pregnancy. It would seem that, if that argument correctly reflects the law under Title VII, an employer might be required to institute a wage continuation plan for the full spectrum of physical disabilities if, as the Appendix to this Brief illustrates, a substantially higher percentage of females than male employees suffer such disabilities. The necessary implication of the "disparate effect" argument is that the only disabilities for which an employer can lawfully refuse to provide protection are those which the sexes, and races, and ethnic groups, experience in roughly equivalent percentages. Such a conclusion would stand Title VII on its head by requiring employers, in the name of equality, to extend benefits whenever a protected group would gain a *disproportionate* benefit from such an extension.[35]

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[34] 417 U.S. at 496 n.20.

[35] This is exactly the dilemma which the Court has refused to create for state welfare programs. In *Jefferson* v. *Hackney,* 406 U.S. 535, 548-49 (1972), the Court rejected the same kind of "disparity" argument:

> [G]iven the heterogeneity of the Nation's population, it would only be an infrequent coincidence that the racial composition of each grant class was identical to that of the others. The acceptance of appellants' constitutional theory would render

B. The EEOC Guideline That Sick Leave Benefits Should Be Provided for Normal Pregnancy Should Be Rejected in This Case

The court below[36] sought to justify the result it reached by relying on EEOC Guidelines[37] to the effect that the exclusion of normal pregnancy from a disability plan constitutes sex-based discrimination in violation of Title VII. We first point out that these Guidelines were issued before this Court declared in *Aiello* that the exclusion of normal pregnancy is not sex discrimination "[a]bsent a showing that distinctions involving pregnancy are mere pretexts designed to effect an invidious discrimination against members of one sex or the other * * *."[38] Moreover, while that decision is the most definitive statement of reasons why this Court should reject the EEOC Guideline, the Guideline also lacks those attributes which might otherwise warrant this Court's deference.

As the Court held in *Skidmore* v. *Swift & Co.*:[39]

> The weight of . . . [the administrative interpretation] in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.[40]

suspect each difference in treatment among the grant classes, however otherwise lacking in racial motivation and however otherwise rational the treatment might be. Few legislative efforts to deal with the difficult problems posed by current welfare programs could survive such scrutiny, and we do not find it required by the Fourteenth Amendment.

[36] 519 F.2d 661, 664 (4th Cir. 1975).

[37] 29 C.F.R. § 1604.10(b).

[38] 417 U.S. at 496-497 n.20.

[39] 323 U.S. 134 (1944).

[40] 323 U.S. at 140.

The importance of these elements was emphasized by the Court in *Espinoza* v. *Farah Manufacturing Co., supra.* The Court there noted that application of the Guideline was inconsistent with the congressionally approved policy of limiting federal employment to United States citizens, and that the then-current Guideline was inconsistent with prior interpretations of the EEOC. Although the Court stated that the EEOC's Guideline "is no doubt entitled to great deference," it concluded that "[c]ourts need not defer to an administrative construction of a statute where there are 'compelling indications that it is wrong.' "[41]

Evaluation of Section 1604.10(b) in such terms reveals compelling indications that it too is wrong. For the first six years following the effective date of Title VII, EEOC consistently and publicly interpreted the Act as permitting employment practices to take into account the obvious uniqueness of pregnancy.[42] Thus, at least through 1970, the EEOC's position was that employers must grant maternity leave to pregnant employees but that such absences need not be covered as a paid leave under temporary disability plans.[43]

[41] 414 U.S. at 94-95.

[42] In its First Annual Report to Congress, at pages 40 and 41, the EEOC stated as follows:

> The prohibition against sex discrimination is especially difficult to apply with respect to the female employee who becomes pregnant. In all other questions involving sex discrimination, the underlying principle is the essential equality of treatment for male and female employees. *The pregnant female, however, has no analogous male counterpart* and *pregnancy necessarily must be treated uniquely.* (Emphasis added.)

[43] *See, e.g.*, Dec. No. 71-308, Sept. 17, 1970, CCH EEOC Decisions ¶ 6170; Dec. No. 71-562, Dec. 4, 1970, CCH EEOC Decisions ¶ 6184; Dec. No. 70-360, Dec. 16, 1969, CCH EEOC Decisions

The Commission's published policy changed abruptly in 1971 with Decision No. 71-1474. This decision concluded that the exclusion of pregnancy from coverage under a disability benefits plan was discriminatory when all other non-occupationally related disabilities were covered. The decision did not set forth any further rationale for its conclusion or its failure to follow previous Commission policy. Following Decision No. 71-1474, there is no record of further EEOC pronouncements on this subject until the Commission published its revised Guidelines on April 4, 1972, without any accompanying evidentiary support,[44] and without affording any opportunity for public review and comment.

¶ 6084; Dec. No. 68-4-538E, June 16, 1969, CCH EEOC Decisions ¶ 6125.

During these years, the EEOC's approach to pregnancy continued to follow the Nov. 15, 1966 opinion of its General Counsel, which stated the Commission policy as follows:

> The Commission policy with respect to pregnancy does not seek to compare an employer's treatment of illness or injury with his treatment of maternity, since maternity is a temporary disability unique to the female sex . . . .

This view, and that advanced by this *amicus*, is consistent with the legislative history of the proposed Equal Rights Amendment:

> . . . [T]he original resolution does not require that women must be treated in all respects the same as men. Equality does not mean sameness as a result. The original resolution would not prohibit reasonable classifications based on characteristics that are unique to one sex.

S. Rep. No. 92-689, p. 12.

[44] As one court noted in refusing to follow the new Guideline, "There appears to be no factual basis upon which these regulations were drawn." *Newmon* v. *Delta Air Lines, Inc.*, 374 F. Supp. 238 (N.D. Ga. 1973).

CONCLUSION

For all of the foregoing reasons, the Bell System Companies urge that the decision of the Court of Appeals be reversed.

Respectfully submitted,

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APPENDIX

APPENDIX

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LEE SATTERFIELD
EXECUTIVE ASSISTANT AND ATTORNEY

January 28, 1974

Mr. Philip J. Davis
Director
Office of Federal Contract Compliance
U. S. Department of Labor
14th and Constitution Ave., N.W.
Washington, D. C. 20210

Dear Mr. Davis:

In response to your request, I am transmitting the enclosed data relevant to the proposed revisions to the Office of Federal Contract Compliance Sex Discrimination Guidelines, 38 Fed. Reg. 35336-35338 (Dec. 27, 1973), on behalf of the American Telephone and Telegraph Company and the Associated Bell Companies. This data focuses on proposed Section 60-20.3(h)(2), which provides in part:

> Medically verifiable disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are for all job-related purposes, temporary disabilities and shall be treated as such under any health or temporary disability insurance policies or sick leave plans available in connection with employment . . .

This section would reverse the present position of OFCC that, "There is no requirement that an employee be paid during absence [for maternity leave]." Memorandum of John L. Wilks, Director, OFCC, to Agency Heads, November 12, 1970, at 5.

Without regard to legal arguments against adoption of proposed Section 60-20.3(h)(2), which undoubtedly will be developed by other interested parties, the attached data statistically demonstrates: (1) the present treatment of men and women under the Companies' sickness and accident disability plan; (2) the cost and impact on the male and female share of disability benefits which would occur if normal pregnancy were treated as a sickness or accident; and (3) the fact that nearly half of those taking maternity leave do not return to work which sharply distinguishes the nature of their absence for employee benefit purposes from accident and sickness absences.

Based on this data, as well as the settled medical opinion that pregnancy is neither a sickness nor accident, we urge that OFCC *not* adopt proposed Section 60-20.3(h)(2), but maintain its present position that federal contractors need not provide sickness and accident benefits for pregnancy.

LEE SATTERFIELD
Executive Assistant
& Attorney

Bell System Data Relevant to Proposed Revisions in OFCC Sex Discrimination Guidelines Regarding Treatment of Absences Due to Normal Pregnancy

I. INTRODUCTION

Recently, six companies in the Bell System (Illinois, Southern, South Central, New York, Long Lines and Pacific) have been sued by parties attacking the legality of their sickness and accident disability programs. The crux of these charges is that the failure to treat normal pregnancy as a disability under sickness and accident disability programs, constitutes discrimination against female employees on the basis of sex. Other major employers, such as General Motors, General Electric, and Delta Air

Lines,[1] are facing similar legal challenges, and initial court decisions are now being rendered. For example, a federal district court in Atlanta recently held that Delta Air Lines could not require female employees to leave work at a specific time prior to delivery, but that absence due to pregnancy and childbirth need not be covered under an accident and sickness disability program. *Newmon* v. *Delta Air Lines, Inc.*, Civ. No. 15681 (N.D. Ga., Dec. 31, 1973). *But see, Wetzel* v. *Liberty Mutual Insurance Co.*, Civ. No. 72-169 (W.D. Pa., Jan. 9, 1974).

Since no company in the Bell System treats normal pregnancy as an accident or sickness disability, the implications of these pending cases will reach beyond the companies directly involved. Every company in the System will be affected by the results of these suits. In light of these legal challenges to current sickness and accident disability programs, it is appropriate to review the operation of the Bell System sickness and accident disability program and to estimate its current effect on employees and the effects which would result by treating pregnancy as a sickness or accident disability.

II. PRESENT DISABILITY PLANS

The sickness and accident disabilities of Bell System employees are classified, for record keeping purposes, into seventeen basic groups (see Table 1) which cover every disability recognized under the various plans within the System. For example, disabilities are grouped into infective and parasitic diseases, mental disorders, diseases of the circulatory system, the digestive system, the musculoskeletal system, and even accidents, poisonings and violence. Within each of these groups, the System's records reflect, by sex, the frequency of occurrence of each

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[1] Grogg v. General Motors Corp., 73 Civ. No. 63 (KTD) (S.D. N.Y.); Gilbert v. General Electric Co., No. 142-72-R (E.D. Va.); Newmon v. Delta Air Lines, Inc., Civ. No. 15681 (N.D. Ga.).

group of disability, the number of disability absences, and the duration of these absences (see Tables 2 and 3).

An examination of the Bell System sickness and accident disability figures for the fiscal year 1970-71 (see Table 2), reveals that in sixteen of the seventeen disability group classifications the frequency rate of women absent from work was higher than for men; the number of cases of women disabled was higher than for men; and women lost more total days from work than men.[2] Finally, an examination of the severity rate (average duration) of these absences indicates that women were generally absent for a longer period than men. While women were 48.57% of the System's total work force eligible to receive disability payments as of December 31, 1970, a review of the System's disability statistics, including all disability groups, reveals that they received wage benefits for 64.65% of the total days for which such benefits were paid during fiscal year 1970-71. Thus, even without treating normal pregnancy as a sickness or accident disability, in fiscal year 1970-71 women collected benefits for a percentage of days far in excess of their percentage of the company work force. It should be recognized that wage replacement benefits were paid to women absent on account of complications of pregnancy and childbirth.[3]

Fiscal year 1971-72 reflects the same sort of pattern as 1970-71 (see Table 3). In the same sixteen of seventeen disability group classifications, women were absent at a higher rate than men; experienced more disabilities than men; and lost more days from work than men. Finally, the statistics again show that generally, when absent, women were absent for longer periods than men. Although

[2] The one disability group category where men are absent at a higher rate than women, experience more disabilities than women, and lose more disability days than women is diseases of the cirulatory system, which includes heart attacks and similar cardiac problems. (See Tables 2 and 3.)

[3] See classifications 11 and 15, Tables 1, 2, and 3.

women made up 48.29% of the Bell work force eligible for disability payments as of December 31, 1971, they accounted for 63.45% of the total days for which benefits were paid in all disability groups during fiscal year 1971-72. Again this disproportionate figure reflects the present operation of the Bell Companies' disability programs, which are under attack, and which do not treat normal pregnancy as a sickness or accident disability.

III. The Effect of Treating Pregnancy As A Sickness or Accident Disability

Since disability payments for pregnancies would be made only to women, treating normal pregnancy as a sickness or accident disability would mean that women employees would receive even greater benefits than the disproportionate benefits they already receive.

In late 1973, eight companies in the System performed a manual count of the number of maternity leaves that had been granted in 1972. These companies then compared this count with the total number of female employees as of December 31, 1972. The results are as follows:

Company	Number of Maternity Leaves Granted in 1972	Number of Female Employees as of December 31, 1972	Percent
New York	2,406	48,115	5.00
New Jersey	761	16,113	4.73
Chesapeake and Potomac	1,274	23,861	5.34
Ohio	732	13,321	5.50
Illinois	1,036	20,968	4.94
Northwestern	834	14,596	5.72
Southwestern	1,700	39,316	4.33
Pacific Northwest	533	9,969	5.35
Totals	9,276	186,259	4.98

By projecting the results of this eight company survey,[4] a fairly accurate estimate can be made of the System-wide effect of treating pregnancy as a sickness or accident disability.

The Bell System Companies employed approximately 434,400 women eligible for disability benefits in fiscal year 1970-71 (as of December 31, 1970). Assuming 5% of these women took maternity leave in that fiscal year, the System would have had to provide disability payments for approximately 21,700 pregnancies if maternity had been treated as a sickness and accident disability during this period. No figures have yet been compiled that accurately reflect the average length of maternity leave taken throughout the System; nevertheless, figures compiled by Illinois Bell indicate that within the Company the average maternity leave per pregnancy has been approximately 5½ months. Of course, it is reasonable to assume that most women would not be disabled for 5½ months as a result of normal pregnancy and childbirth. Indeed, the testimony of medical experts for both sides in a court action pending against General Electric (see note 1 *supra*) that is similar to the suits the Bell Companies are facing indicates that the total period of disability may be less than six weeks. However, two courts have held in a related context that eight weeks may be an appropriate estimate of the time necessarily lost from work due to pregnancy.[5] Using such an eight week period for calculations, and keeping in mind that the actual period could be found to be considerably

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[4] The companies involved in this count have almost 40% of the System's female employees and represent a cross section of the entire Bell System. Thus, there is no reason to believe that the composite figures presented by this survey would not be valid estimates of figures for the entire System.

[5] Health v. Westerfield Board of Education, 345 F. Supp. 501 (S.D. Ohio, 1972); Doe v. Osteopathic Hospital, 3 FEP 1128 (D. Kans. 1971).

longer, or shorter,[6] if the estimated 21,700 women who took maternity leave in fiscal year 1971 had received disability benefits for eight weeks each, an additional 1,215,200 disability days would have been covered in that year. Thus, instead of receiving benefits for almost 65% of the days for which disability payments were made, women, who represented approximately 49% of the System work force eligible for benefits during this period, would have received benefits for over 72% of the days for which disability payments were made.

Similarly, if 5% of the System's fiscal year 1971-72 female work force eligible for disability benefits, approximately 461,500 women as of December 31, 1971, had received disability benefits for maternity absence in that period, a total of approximately 23,000 pregnancies would have been covered. Assuming disability payments had been made for an average of eight weeks for each of these pregnancies an additional 1,288,000 disability days would have been paid in 1971-72. Therefore, women, who represented approximately 48% of the System work force during that period, would have collected 71% of the total disability days.

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[6] A recent example of the conceivable magnitude of payment periods occurred in Illinois. The State Fair Employment Practices Commission awarded two claimants disability payments for the full six of their maternity leaves. Elliott v. Turner Co., (Charge No. 72C-1155, December 12, 1973); Bennett v. Turner Co., (Charge No. 72C-1156, December 12, 1973). If the estimated 21,700 women who took maternity leaves in the System during fiscal year 1970-71 had received disability payments for the entire period of their 5½ month maternity leave (145 days), an additional 3,146,500 days of disability benefits would have been paid in the System. In other words, pregnant women would have received benefits due to their pregnancies for more disability days than all other women received for their non-pregnancy related disability absences; furthermore, pregnant women would have been paid for nearly twice as many disability days due to their pregnancies than were paid to men for all their disabilities!

If pregnancy had been covered during these periods as an eight week disability, 5% of the women, or approximately *2.5% of the System's work force, would have accounted for approximately 21% of the total days for which disability payments were made* in both fiscal years 1970-71 and 1971-72. No other single disability group—even including both sexes—could generate so large a number of disability days for which benefits would be paid.

These figures demonstrate that treating pregnancy as a sickness or accident disability would create a situation far different from the picture of "equality" painted by opponents of the present disability programs. Indeed, the statistics reveal that women employees already are receiving a significantly greater number of paid benefit days for disabilities than are male employees. Treating pregnancy as a sickness or accident disability would further reduce the percentage of disability days paid to male employees.

Moreover, there can be no doubt that cost of treating normal pregnancy as a sickness or accident disability would be immense. Using the previously mentioned figures which were compiled in late 1973 as the basis for projection, representative costs can readily be estimated. All employees are entitled to disability wage payments on the basis of seniority. An Illinois Bell study indicates that the average seniority of women taking maternity leave is between two and five years. Employees with 2-5 years service may receive up to full wage pay for their first week of absence as a departmental expense paid by the Company. Disability plan wage payments begin on the eighth calendar day of absence. During the first four weeks of a disability period, an employee with 2-5 years of service receives full wage pay. Subsequently, for a forty-eight week period disability payments equalling one-half the weekly salary are paid.

The average weekly wage of women with 2-5 years seniority, who were employed by the System Telephone Operating Companies in fiscal year 1970-71 as of December 31, 1970, was $111.75. If eight weeks of disability benefits had been made to pregnant employees, using the average length of Company service of those taking maternity leave during this period and the average wage of these female employees during 1970-71, the cost impact of wage continuation payments that would result from treating pregnancy as a sickness or accident disability can be estimated. Given the figures discussed above, the wage costs of treating each pregnancy as an eight week disability would have been $726.39 per pregnancy.[7] The System-wide costs for all 21,700 pregnancies in fiscal year 1970-71 would have been $15,762,663 in basic wages; in other words, approximately 2.5% of the System's work force would have received 14.4% of the basic wage benefit dollar. This does not include other wage related costs such as Social Security, pensions, health insurance, etc.[8]

The figures for fiscal year 1971-72 are comparable. The average weekly wage of female employees with 2-5 years seniority, who were employed during this period as of December 31, 1971 was $127.34. Assuming the same seniority and average disability figures applied to fiscal year 1970-71 above, the wage costs of treating each 1971-72 pregnancy as a sickness and accident disability would have been $827.71. The costs for all 23,000 pregnancies within the System during this period would have been $19,037,-

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[7] This assumes that a pregnant employee received full wages for her first week of absence (which may be paid by the Company as a departmental expense), followed by full pay for the next four weeks' absence and half pay for the last three weeks' absence under the Company's disability plan.

[8] This also does not include the cost of establishing and administering a program to determine the length of each normal pregnancy disability and the amount of disability payments to be made for each such pregnancy.

330[9] in basic wages, not including other wage related costs. Again, had normal pregnancy been treated as a sickness and accident disability, a significant portion of the basic wage benefit dollar (13.90%) would have been concentrated in a small percentage of the work force (approximately 2.5%).

IV. Maternity Leave Return Rate

No system-wide figures indicating the precise work return rate from maternity leave and other disablities have yet been prepared; nevertheless, Illinois Bell Telephone Company recently completed such a study. The results clearly established another factor indicating the questionable equity and financial wisdom of treating pregnancy as though it were a sickness or accident disablity. The Illinois study reveals that in calendar year 1972 all but approximately 3% of those employees who were absent as a result of presently covered sickness and accident disabilities returned to work.[10] By comparison, however, during the same period more than 48% of employees who took maternity leave did not return to the Illinois Bell work force following their leave. Projecting the results of this study to the entire System, the inequity of covering pregnancy as a sickness or accident disability is manifest. If

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[9] These figures represent an average of eight weeks disability for each pregnancy. As noted earlier, see footnote 6, this figure could be increased significantly by administrative or judicial decisions. If the entire period of an average 5½ month maternity leave were treated as a disability for purposes of the sickness and accident program, the fiscal year 1971 and 1972 costs of the Bell Companies in basic wages alone would have been $32,739,007 and $39,539,070 respectively.

[10] The vast majority (almost 90%) of employees who did not return to work after absences as a result of presently covered sickness and accident disabilities either died or became eligible for company pensions. Only 0.57% of Illinois Bell's employees actually resigned from company services after absences presently covered by the sickness and accident disability program.

the treatment of pregnancy as a sickness or accident disability would have accounted for between approximately 15.7 million dollars of basic wage benefit payments in fiscal year 1971 and 19.0 million dollars in fiscal year 1972 (assuming an eight week disability period for both fiscal years) approximately 7.6 and 9.1 million dollars of the yearly wage benefits paid in these respective fiscal years would have gone to claimants who never returned to work! These wage payments would not have served as a bridge to carry workers between periods of employment, which is the basic purpose of disability benefits, but instead would have constituted a unique form of severance pay.

V. Conclusion

The statistical evidence discussed above highlights the effects of treating pregnancy as a sickness and accident disability. An examination of this evidence raises serious doubts about the equity of so treating pregnancies. Already women receive wage benefits for days of absence as a result of sickness and accident disability that are greatly disproportionate to the wage continuation benefits which men receive. Treating pregnancy as a sickness and accident disability no matter how brief the average period of such disability, can only further distort this important benefit in favor of female employees. The cost impact of accomplishing this questionable result will be immense. Furthermore, the wage benefit payments received under this coverage, although amounting to millions of dollars, will inure to the benefit of only 5% of the Bell Companies' female employees—less than 2.5% of the work force. Finally, a look at the work return rates of employees taking maternity leave indicates that nearly half of the benefits paid for pregnancy would be paid to women who will never return to the System's work force.

Table 1

Sickness and Accident Summary Bell System

Group 01 Infective and parasitic diseases
Group 02 Neoplasms
Group 03 Endocrine, nutritional and metabolic diseases
Group 04 Diseases of blood and blood-forming organs
Group 05 Mental disorders
Group 06 Diseases of nervous system and sense organs
Group 07 Diseases of circulatory system
Group 08 Diseases of respiratory system
Group 09 Diseases of digestive system
Group 10 Diseases of genitourinary system
Group 11 Complications of pregnancy, childbirth and puerperium
Group 12 Diseases of skin and subcutaneous tissue
Group 13 Disease of musculoskeletal system and connective tissue
Group 14 Congenital anomalies
Group 15 Perinatal morbidity and mortality
Group 16 Symptoms and ill-defined conditions
Group 17 Accidents, poisonings and violence

Table 2

Total Bell System Sickness and Accident Figures for Fiscal Year 1970-71

Disability Category	Sex	No. of Cases	Frequency Rate Per 1,000 Employees	Severity Rate (average duration of illness)	Total Days Lost
01	M	2,726	5.9	26.3	71,647
	F	5,422	12.5	27.1	146,930
02	M	1,204	2.6	66.6	80,173
	F	4,991	11.5	55.6	277,647
03	M	745	1.6	38.9	28,951
	F	1,134	2.6	51.8	58,785

Disability Category	Sex	No. of Cases	Frequency Rate Per 1,000 Employees	Severity Rate (average duration of illness)	Total Days Lost
04	M	93	0.2	40.6	3,774
	F	535	1.2	36.7	19,634
05	M	1,527	3.3	57.2	87,285
	F	3,306	7.6	67.6	223,503
06	M	1,560	3.4	44.3	69,064
	F	2,592	6.0	42.1	109,132
07	M	4,637	10.1	69.4	321,773
	F	3,582	8.2	62.2	222,723
08	M	8,693	18.9	19.5	169,537
	F	18,397	42.3	19.2	353,955
09	M	5,488	11.9	38.1	208,816
	F	5,744	13.2	41.5	238,532
10	M	2,289	5.0	29.3	66,982
	F	11,137	25.6	33.6	374,707
11	M	—	—	—	—
	F	3,104	7.1	27.8	86,438
12	M	1,154	2.5	25.6	29,574
	F	1,617	3.7	28.6	46,319
13	M	3,941	8.6	46.4	182,686
	F	5,142	11.8	53.0	272,352
14	M	149	0.3	51.6	7,668
	F	304	0.7	42.2	12,822
15	M	—	—	—	—
	F	328	0.8	58.2	19,084
16	M	1,391	3.0	29.8	41,418
	F	2,909	6.7	34.6	100,758
17	M	5,694	12.4	37.4	212,981
	F	7,696	17.7	42.9	330,467

Days Lost	
Male	1,582,329
Female	2,893,788
TOTAL	**4,476,117**

Table 3

Total Bell System and Accident Figures for Fiscal Year 1971-72

Disability Category	Sex	No. of Cases	Frequency Rate Per 1,000 Employees	Severity Rate (average duration of illness)	Total Days Lost
01	M	2,594	5.2	30.4	78,904
	F	5,108	11.1	29.3	149,470
02	M	1,305	2.6	70.0	91,352
	F	5,390	11.7	57.6	310,518
03	M	719	1.5	45.7	32,832
	F	1,172	2.5	50.1	58,695
04	M	121	0.2	43.5	5,252
	F	462	1.0	43.9	20,281
05	M	1,568	3.2	62.4	97,893
	F	3,445	7.5	66.6	229,558
06	M	1,557	3.2	47.3	73,652
	F	2,584	5.6	44.7	115,477
07	M	5,007	10.1	73.0	365,723
	F	3,950	8.6	61.7	243,865
08	M	10,093	20.4	18.9	191,101
	F	21,789	47.2	18.7	408,365
09	M	5,699	11.5	39.4	224,655
	F	5,994	13.0	42.3	253,522
10	M	2,441	4.9	29.2	71,290
	F	11,262	24.4	34.7	391,224
11	M	—	—	—	—
	F	2,738	5.9	29.0	79,410
12	M	1,325	2.7	28.0	37,150
	F	1,627	3.5	30.1	48,936

Disability Category	Sex	No. of Cases	Frequency Rate Per 1,000 Employees	Severity Rate (average duration of illness)	Total Days Lost
13	M	4,129	8.4	49.4	203,846
	F	5,419	11.7	55.8	302,345
14	M	172	0.3	46.2	7,941
	F	339	0.7	53.5	18,119
15	M	—	—	—	—
	F	255	0.6	59.5	15,164
16	M	1,487	3.0	30.3	45,111
	F	3,103	6.7	38.0	118,036
17	M	6,597	13.3	40.0	264,127
	F	7,904	17.1	43.6	344,862

Days Lost	
Male	1,790,829
Female	3,107,847
TOTAL	4,898,676